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John Galanis v. Donald H. Boyes and Betty Moyes : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED
JUL 5 - 1964
Clerk, Supreme Court, Utah

JOHN GALANIS,
Plaintiff and Appellant,

vs.

DONALD H. MOYES and BETTY MOYES, his wife,
Defendants and Respondents.

Case No. 10134

APPELLANT'S BRIEF

Appeal from the Order of Dismissal of the Third District Court in and for Salt Lake County.
Honorable Ray Van Cott, Jr., Judge

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MAY 3 - 1965
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IN THE SUPREME COURT
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JOHN GALANIS,
Plaintiff and Appellant,

vs.

DONALD H. MOYES and BETTY MOYES, his wife,
Defendants and Respondents.

Case No. 10134

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

Appellant and Respondents were defendants in a cause of action involving an agreement and a guaranty, wherein judgment was entered against them jointly and severally. The Appellant and other defendants satisfied the judgment. The Respondents refused to pay any sum toward the satisfaction of said judgment; and the Appellant brought an action against the Respondents to enforce contribution for their proportionate share.

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DISPOSITION IN LOWER COURT

The complaint was filed by the Appellant; and the Respondents filed a motion to dismiss on the grounds that the complaint failed to state a claim for a cause of action upon which relief could be granted. The motion to dismiss was noticed up and heard before the Honorable Ray Van Cott, Jr., presiding. The matter was argued by respective counsel, and the Court granted the Respondents' motion to dismiss.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Order of Dismissal as a matter of law, in that the complaint does state a cause of action upon which relief can be granted.

STATEMENT OF FACTS

The Appellant and Respondent, Donald H. Moyes, were in business together as officers in the Utah corporation, Transport Equipment Center.

On or about November 23, 1959, the aforesaid corporation entered into a revolving credit agreement with Clark Equipment Credit Corporation; and this corporation required the Appellant and his wife and the Respondents as well as another officer and his wife to personally guarantee the revolving credit agreement.

The aforesaid revolving credit agreement became delinquent, and the corporation, Transport Equipment

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Center, as well as the personal guarantors, were in default. An action was brought by Clark Equipment Credit Corporation on said agreement in the Third Judicial District Court, in and for Salt Lake County, in the State of Utah;and on or about December 7, 1961, a summary judgment was entered against the corporation, Transport Equipment Center, and each of the individual defendants, according to their percentage of guaranty. Judgment was entered for the amount of One Hundred Ten Thousand Nine Hundred Twenty-seven and thirty-six/100 ($110,927.36) Dollars. Transport Equipment Center paid the sum of Fourteen Thousand Two Hundred Twenty-Six and eighteen/100 ($14,-226.18) Dollars toward said judgment, and the remaining defendants, excluding the Respondents, personally paid the sum of Seventy-Two Thousand Three Hundred Thirty-Four and sixty-one/100 ($72,334.61) Dollars to the Clark Equipment Credit Corporation in satisfaction of the judgment.

All of the judgment debtors who contributed toward the satisfaction of the judgment assigned and transferred all of their rights and interests that they would have against the Respondents to the Appellant. The Respondents have refused to pay any sum in contribution for the amounts paid by the Appellant or his assignees.

The Appellant, on January 14, 1964, brought an action, in the Third Judicial District Court, in and for Salt Lake County, in the State of Utah, which is before this

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Court at this time, praying that the Appellant be subrogated to the rights of the judgment creditor, Clark Equipment Credit Corporation, and asked that he receive a judgment against the Respondents in the amount of Twenty-Eight Thousand Nine Hundred Thirty-Three and eighty-four/100 ($28,933.84) Dollars, pursuant to their percentages of guaranty on the said agreement.

This action, on February 21, 1964, was dismissed by the District Court on the basis that the complaint did not state a cause of action.

STATEMENT OF POINT RELIED UPON

AS A MATTER OF LAW, IN SEEKING CONTRIBUTION AND REIMBURSEMENT, A JUDGMENT DEBTOR, AS THE APPELLANT, IS NOT LIMITED TO RULE 69(h) OF THE UTAH RULES OF CIVIL PROCEDURE. THE CONVENIENCE PROVIDED FOR BY THE CLERK OF THE COURT IN SAID RULE IS NOT AN EXCLUSIVE REMEDY, AND THE APPELLANT MAY SEEK CONTRIBUTION FROM HIS CODEFENDANTS, WHO ARE LIABLE FOR THEIR PROPORTION OF THE DEBT IN TWO ALTERNATIVES: TO ACT UNDER THE CONVENIENCE OUTLINED IN THE AFORESAID RULE WITHIN ONE MONTH AFTER PAYMENT, OR, SECONDLY, TO FILE A SEPARATE AND

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INDEPENDENT ACTION WITHIN FOUR YEARS AFTER THE APPELLANT HAS PAID THE JUDGMENT; THE COURT ERRED IN DISMISSING THE APPELLANT'S COMPLAINT ON THE BASIS THAT IT DID NOT STATE A CAUSE OF ACTION, IN THAT IT WAS NOT FILED WITHIN THE ONE-MONTH TIME LIMIT, PURSUANT TO THE RULE.

ARGUMENT

The statutory language contained in Rule 69(h) of the Utah Rules of Civil Procedure has not been construed by the Utah Supreme Court. Other states, such as California and Montana, have similar, if not identical, provisions in their civil procedure codes, and their State Courts have examined and interpreted the provisions. It has been held by these Courts that the Rule was enacted for the benefit of sureties and joint debtors in order to enable them, without bringing a separate action, to use the judgment and the writs of the Court for the purpose of compelling, in case of sureties, the repayment from their principal, or contribution from co-sureties, and in the case of judgment debtors, contribution from the co-debtors. Moreover, said Rule does not change the substative law, but simply provides a convenient method of enforcing contribution by a judgment debtor who has paid a judgment, as against a codefendant or codefendants liable for the proportion

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of the debt. The remedy provided for by said Rule is not exclusive, but cumulative. Williams vs. Riehl, 127 Cal. 365, 59 P. 762 (1899); Dial vs. Sunset Tel. & Tel. Co., 162 Cal. 136, 121 P. 379 (1912); San Joaquin Valley Bank vs. Gates City Oil Company, 36 Cal. App. 791, 173 P. 781 (1918); McIntosh vs. Funge, 128 Cal. App. 70, 16 P2nd 1006 (1932); and Merchants National Bank of Great Falls vs. Great Falls Opera House Company, 23 Mont. 33, 57 P. 445 (1899).

The California Court in Tucker, et al, vs. Nicholson, 12 Cal. 2d 427, 84 P.2nd 1045 (1938) examines Section 109 of the California Code of Civil Procedure, which is the same as Utah's Rule concerning contribution by judgment debtors. It held that this Section was cumulative and not exclusive. The Court stated:

> "The debtor upon paying the judgment may take an assignment thereof from the creditor . . . The assignment may be taken in the name of the judgment debtor, or, as in the instant case, in the name of a third party. Whether the judgment debtor proceeds under 709, or by taking an assignment of the judgment, the payment to the judgment creditor does not operate as a satisfaction of the judgment as between the debtor paying it and those jointly liable with him . . . The judgment is kept alive in equity to be used by the debtor paying to recover from his co-obligators the proportions they should pay, and he may have execution against them. . . . Since his remedy in such circumstances is upon the judgment itself, the period of limitations is five

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> years. . . . But where the judgment debtor neither takes an assignment nor proceeds under 709, Code of Civil Procedure, payment to the creditor constitutes satisfaction not only as to him, but also as between the judgment debtor making payment and his co-obligors. . . . The remedy of a judgment debtor is then upon the obligation which the law implies that those jointly liable with him shall reimburse him to the extent of their proportion of the joint debt. The period of limitations upon this implied obligation is two years from the date payment is made to the creditor."

The Appellant did not take an assignment nor proceed under Rule 69(h) of the Utah Rules of Civil Procedure. The Appellant chose the remedy of the law, which implies that those jointly liable with him shall reimburse him to the extent of their proportion of the joint debt.

In the instant case, the action was brought by the Appellant within four years after the payment of the judgment. Section 78-12-25, Utah Code Annotated, 1953, provides for a four-year statute of limitations.

CONCLUSION

It is respectfully submitted by the Appellant that the lower Court erred in granting the Respondents' motion to dismiss, in that it was not the intention of the designers of the Rule to make Rule 69(h) of the Utah

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Rules of Civil Procedure an exclusive remedy. They intended to give to judgment debtors a convenient method to secure contributions from the co-debtors. They never intended to deny the Appelant the remedy of filing a separate and independent action.

Respectfully submitted,

Alan D. Frandsen
Attorney for Plaintiff and Appellant

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